



Comptroller General
of the United States

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Washington, D.C. 20548

REDACTED VERSION'

Decision

Matter of: Underwater Development Technology

File: B-256558.2

Date: August 4, 1994

Craig A. Holman, Esq., and Dennis J. Riley, Esq., Riley & Artabane, P.C., for the protester.
Garry S. Grossman, Esq., and Robert E. Little, Jr., Esq., for Columbia Research Corporation, an interested party.
Steve Conway, Esq., and Jonathan H. Kosarin, Esq., Department of the Navy, for the agency.
Robert Arsenoff, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where, contrary to the protester's allegations, the awardee's proposal complied with the solicitation's technical requirements; no prejudicially disparate treatment of offerors occurred during the evaluation process; and the agency performed an adequate cost realism analysis.

DECISION

Underwater Development Technology (UDT) protests the award of a contract to Columbia Research Corporation (CRC) under request for proposals (RFP) No. N61331-94-R-0014, issued by the Department of the Navy for the overhaul and conversion of SEAL Delivery Vehicles (SDV). UDT alleges that CRC failed to submit a technically acceptable proposal and that the Navy failed to perform a proper cost realism analysis.

We deny the protest.

The RFP contemplated the award of a cost-plus-fixed-fee requirements contract for engineering services, including testing, to be performed on SDVs pursuant to individual

The decision in this protest was issued subject to a General Accounting Office protective order on August 4, 1994. After consultation with the parties, our Office determined that the entire text could be removed from the coverage of that protective order, and the decision therefore appears here in full.

delivery orders to be issued by the Navy. Award was to be made to the offeror submitting the lowest cost, technically acceptable proposal. Technical acceptability was assessed on a "pass/fail" basis. Proposed costs were to be evaluated for realism.

After an initial round of evaluations, two firms, UDT and CRC, were retained in the competitive range. Following best and final offers (BAFO), which were both found to be technically acceptable, CRC was awarded the contract as the result of its lower evaluated cost of \$6,228,095 as compared to UDT's evaluated cost of \$6,325,924.¹

The protester makes three principal allegations: (1) CRC did not possess sufficient equipment, in particular hyperbaric chambers,² to be found technically acceptable; (2) one of CRC's proposed key employees for the position of electronics assembler did not meet RFP certification requirements prior to award; and (3) the Navy did not perform an adequate cost realism analysis. Based on our review, we find the agency's evaluation was reasonable and proper.

HYPERBARIC CHAMBERS

The RFP provided that Navy SDV testing facilities and government furnished equipment (GFE) would be made available for use by the contractor; however, offerors were advised that "[e]ach delivery order will specify what equipment will be available to use by the contractor" and that the "[c]ontractor will be required to furnish test equipment if the Government test equipment is not available." Accordingly, the RFP required that the "[c]ontractor must offer facilities that are functionally equivalent to the [Navy] facilities specified in paragraph 4.2 of the RFP to be considered technically acceptable." Further, the RFP stated that "[i]f the contractor does not presently have these facilities, [the contractor] should present a plan showing how they will be established by the time of award." Paragraph 4.2 of the RFP stated in pertinent part:

"The following is a general description of the shop facilities currently used [by the Navy] for SDV overhaul and is provided for the offeror's information. The offeror is invited to inspect

¹UDT's costs were reduced in the BAFO cost realism analysis from its proposed \$6,335,464. CRC's remained unchanged.

²A hyperbaric chamber is a device which simulates increased pressure conditions encountered underwater.

these existing facilities and to offer functionally equivalent facilities.

"TESTING FACILITIES AND EQUIPMENT. Complete testing equipment to perform all mechanical and electronic tests per the Integrated Test Plan is provided. Two hyperbaric test chambers (internal dimensions 48" dia. x 120" long and 18" dia. x 24" long) capable of at least 135 psig are provided."

The protester contends that CRC owned only one operational hyperbaric chamber, and that the other chamber mentioned in its proposal was GFE on another contract. UDT further maintains that the hyperbaric chamber actually owned by CRC is too small to perform all of the SDV tests required by the RFP, especially a test in which a fully assembled SDV has to be placed in a hyperbaric chamber. Accordingly, UDT alleges that CRC did not submit a technically acceptable proposal.

During the course of this protest, CRC acknowledged that one of the hyperbaric chambers identified in its proposal was GFE. In light of this information, the Navy reevaluated CRC's proposal and affirmed that it was still technically acceptable. As the Navy points out, all that the RFP required was that the offeror have a facility functionally equivalent to the Navy's or a plan to obtain a functionally equivalent facility. According to the agency, CRC's one operational hyperbaric chamber can perform approximately 85 percent of the SDV tests required by the RFP and the offeror proposed a plan to subcontract with Perry Tritech--a firm with a chamber of sufficient size to perform the remaining tests--in the event that a delivery order is issued that requires the use of equipment that CRC does not have. In the Navy's view, CRC had offered the capability to perform all of the required tests.

The protester does not dispute that CRC's operational hyperbaric chamber can be used for 85 percent of the required tests, but alleges that CRC does not have a plan to obtain facilities necessary for the remaining test requirements. An examination of CRC's proposal belies this allegation. CRC's proposal describes its procedure for subcontracting when required and identifies Perry Tritech as a potential subcontractor for hyperbaric chamber testing of fully assembled SDVs.¹ Thus, we find that the agency had a

¹The protester's counsel selectively quotes from CRC's proposal: "We have not proposed subcontractors for this
(continued...)"

reasonable basis to determine that CRC's proposal was compliant with the requirements set forth in the solicitation relating to capability for hyperbaric chamber testing.

ELECTRONICS ASSEMBLER

The RFP required offerors to propose and furnish resumes for designated key personnel, including two electronics assemblers. The RFP further described the qualifications for an electronics assembler to include "possession of a valid Category E [soldering] certificate." Pursuant to MIL-STD-2000, Category E certification requires completion of a 40-hour training course under the auspices of any Category C soldering certificate holder.

UDT contends that one of CRC's proposed electronics assemblers did not possess a valid Category E soldering certificate prior to award and thus its proposal should have been rejected as technically unacceptable. UDT further contends that, since it was required to produce certificates for its proposed electronics assemblers during discussions with the Navy and CRC was not, it was the victim of unequal and competitively prejudicial treatment.

CRC's initial proposal included two resumes for the electronics assembler positions. The resume of the one individual in question indicated that his "Educational Background" included "MIL-STD-2000 soldering, Category E," which had been accomplished at CRC, where he had been employed since 1989 overhauling SDV electronics systems. CRC states that this individual received the training at CRC from a qualified instructor prior to the submission of the firm's initial offer; however, his actual certificate was issued approximately 1 month after award.

UDT's initial proposal also contained the resumes of two proposed electronics assemblers. Each resume stated that the individual involved "will obtain a Category E soldering certificate in accordance with MIL-STD-2000, Task A, by contract award," and indicated that each individual was

³(...continued)
effort." The remainder of the paragraph following this statement, however, describes CRC's plan to, when required by a delivery order, subcontract with appropriate firms. Further, Perry Tritech is listed as a vendor for large-scale hyperbaric testing with whom CRC, the incumbent, has a working relationship in support of SDV overhaul work on the predecessor contract.

enrolled in a future class to be conducted by a certified Category C instructor.

In written discussions leading to the submission of BAFOs, UDT was advised that its proposal was, with respect to the proposed electronics assemblers, technically acceptable pending their certification. In subsequent oral discussions, UDT maintains that it was asked by the Navy to, and did, readily produce certificates for its two proposed electronics assemblers. The Navy does not dispute UDT's account of the oral discussions and acknowledges that it did not make a similar request of CRC to produce a certificate for the questioned assembler because his resume indicated that he had the necessary training that would allow him to be certified.

As indicated above, UDT alleges that it was somehow prejudiced by the alleged disparate treatment by the Navy with respect to producing Category E soldering certificates prior to award. However, as the Navy points out, the reason that CRC was not requested to produce a soldering certificate is that the questioned assembler's resume indicated that he had the necessary Category E training, and the agency had no reason to doubt that information during the evaluation. On the other hand, the resumes submitted by UDT indicated that the training was pending. Under these circumstances, we find that the Navy acted reasonably in requesting additional information during discussions from UDT but not CRC. Furthermore, in the absence of evidence to the contrary, during the evaluation the Navy could rely on the resume of CRC's proposed assembler in determining that he satisfied the solicitation requirement. Individual Dev. Assocs., Inc., B-225595, Mar. 16, 1987, 87-1 CPD ¶ 290. The fact that, at the time of the award, CRC's assembler did not actually possess the certificate showing that he was qualified does not prove that CRC's offer was submitted in bad faith or that the evaluation was unreasonable. Id.

COST REALISM ANALYSIS

The protester finally alleges that the agency did not adequately analyze CRC's cost and price experience on its predecessor contract with the Navy for SDV work. More specifically, UDT argues that a review of that contract would reveal that CRC "bought in" by proposing artificially low costs that were increased during performance--a practice which UDT believes CRC is continuing to engage in.

Cost realism analyses are performed to determine the extent to which an offeror's proposed costs represent what the contract should cost, and because the agency is in the best position to assess cost realism and must bear the difficulties or additional expenses resulting from a

defective cost analysis, our review focuses on whether the cost evaluation was reasonable. Sherikon, Inc.; Technology Management & Analysis Corp., B-256306; et al., June 7, 1994, 94-1 CPD ¶ 358.

The agency's cost analysis was limited to proposed rates since all labor categories, hours, and material costs were set out in the RFP. All direct rates were verified by the Defense Contract Audit Agency (DCAA) as being actual or were verified by comparison to signed wage agreements in the CRC proposal. DCAA verified all indirect rates, except one, as being CRC's currently approved forward pricing rates; the one exception was analyzed against information supplied by CRC in its BAFO showing the development of the rate and the actual expenses incurred by CRC in January 1994. The contracting officer sampled the vouchers from CRC on its predecessor contract and found the rates proposed by CRC were comparable to those contained in the vouchers. The contracting officer reports that CRC's labor rates could not be compared to the cost trends for direct labor on the predecessor contract as that contract was subject to a Department of Labor wage determination as it was considered to be a covered contract, while the present contract is not. Also, the contracting officer states that a comparison with previous prices paid cannot be made since the prior contract accumulated costs by individual overhaul projects and the present contract is based on total man-hours and materials for an entire year. Finally, the agency reports that it was not concerned about a "buy in" in this procurement because the evaluated costs of the competing proposals are within 1.55 percent of each other; indeed, the agency believed that since both contractors are located in the same county, the closeness in proposed costs suggested a high degree of reliability for each proposal's costs.

Beyond UDT's continuing assertion that because of cost overruns on previous contracts, CRC will encounter cost overruns on the present contract, the protester has not responded to the Navy's explanation of why a detailed review of the cost history of the predecessor contract was not appropriate. Nor has the protester refuted the agency's conclusion that the closeness of the competing proposals indicated a high degree of reliability in the awardee's proposed costs, even though UDT had the opportunity to review CRC's cost proposal pursuant to a protective order issued by this Office. Nor has UDT submitted a detailed response to the specific cost realism analysis performed on CRC's proposal. Under the circumstances, and in light of the advice from DCAA upon which the contracting officer could reasonably rely in these circumstances, we find no

basis for questioning the cost realism analysis performed by the Navy, Sherikon, Inc.; Technology Management & Analysis Corp., supra.

The protest is denied.

Robert P. Murphy
Acting General Counsel